U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9564003

Date: AUG. 31, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, which intends to operate a construction business, seeks to temporarily employ the Beneficiary as the general manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition concluding that the record did not establish, as required that: (1) the Petitioner had secured sufficient physical premises to house its new office; (2) the Beneficiary has been employed abroad in a managerial or executive capacity; and (3) the new office would support a managerial or executive position within one year. We summarily dismissed the Petitioner's subsequent appeal because it did not include a statement that specifically identified an erroneous conclusion of law or statement of fact in the Director's decision.

The matter is now before us on a motion to reopen. In addressing our summary dismissal of its appeal, the Petitioner states that the employee who filed the company's appeal "negligently omitted many facts of our petition" and requests that the matter be reopened. The Petitioner also contests the Director's decision, noting that "the director denied the petition without any reasonable reasons."

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen.

I. LAW

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

II. ANALYSIS

The issue in this matter is whether the Petitioner has either submitted new facts supported by documentary evidence sufficient to warrant the reopening of its appeal, which we summarily dismissed.

The regulations provide that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner timely filed its appeal of the Director's adverse decision in May 2019 and later submitted a half-page brief in which it stated:

> Actually previously the L1-A visa application CASE: [redacted] was already approved by USCIS after [the Beneficiary] came to the USA. In order to save time to go back to apply for visa, we re-applied for the L-1A visa for [the Beneficiary] with the hope that he can stay in the USA to change the visa from B1/B2 to L1-A and start to work immediately. Unfortunately, the second application was denied.

This statement does not identify any erroneous conclusion of law or statement of fact as a basis for the appeal. The record reflects that the Director was aware of the previously approved petition. In fact, the Director had advised the Petitioner in a request for evidence that the current petition is a separate adjudication, noting that the Petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that this is a petition for "new employment."[2] Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. USCIS has clarified that "an adjudicator's fact-finding authority . . . should not be constrained by any prior petition approval, but instead should be based on the merits of each case." USCIS Policy Memorandum, PM-602-0151, Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status (Oct. 23, 2017), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf.

The Petitioner did not argue on appeal that the Director erred by adjudicating this new petition on its merits. Further, the Petitioner's appeal did not address the three substantive grounds for denial stated in the Director's decision. The petition was denied because the Director determined that the evidence did not establish that the Beneficiary was employed abroad in a managerial or executive capacity, that the new office would support a managerial or executive position within one year, or that the new office had secured physical premises. As the Petitioner did not discuss these issues in its appeal or identify an erroneous conclusion of law or statement of fact on the part of the Director, we summarily dismissed the appeal.

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[2] We note that the Petitioner indicated on the Form I-129 that the most recent petition filed on behalf of the Beneficiary was [redacted] which was approved on July 12, 2018. However, USCIS records indicate that the Petitioner filed an L-1A classification petition on his behalf on July 30, 2018, which was denied on November 5, 2018 [redacted]. The instant petition was filed on December 31, 2018. At Part 4 of the Form I-129, the Petitioner responded "No" where asked if the Beneficiary has ever been denied the requested classification. The regulations provide that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." 8 C.F.R. § 214.2(l)(2)(i).

On motion, the Petitioner concedes that its company secretary "omitted many facts of the petition" when filing the appeal. Further, the Petitioner has not submitted any new facts or evidence in support of its motion to reopen that would overcome our reasons for summarily dismissing the Petitioner's appeal.

We will not consider the newly submitted motion brief discussing the merits of the petition absent evidence that we summarily dismissed the appeal in error. The Petitioner has not provided such evidence or shown that the matter should be reopened. Accordingly, the motion to reopen will be dismissed.

ORDER: The motion to reopen is dismissed.